

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

EMMA LOUISE WELLES and
VICTOR JESUS WELLES,

Petitioners,

v.

EAU CLAIRE HOUSING AUTHORITY,

Respondent.

OPINION and ORDER

08-cv-124-bbc

In this proposed civil action for declaratory and injunctive relief, petitioners Emma Louise Welles and Victor Jesus Welles contend that defendant Eau Claire Housing Authority violated their rights under the Americans with Disabilities Act by failing to accommodate petitioner Emma Louise Welles's posttraumatic stress disorder and terminating their participation in the Homeownership Tenant Program. Petitioners have asked for leave to proceed in forma pauperis.

Before petitioners may proceed in forma pauperis, I must determine whether their action is frivolous or malicious, fails to state a claim on which relief may be granted or seeks money damages against a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). In addressing any pro se litigant's complaint, the court must read the allegations

of the complaint generously. Haines v. Kerner, 404 U.S. 519, 521 (1972). Because it appears clear from the complaint that Emma Welles's disability was not what made petitioners ineligible for the Homeownership Tenant Program, petitioners will be denied leave to proceed in forma pauperis on their claim against respondents.

From petitioners' complaint I draw the following allegations of fact.

ALLEGATIONS OF FACT

At all times relevant to this case, petitioners Emma Louise Welles and Victor Jesus Welles were living under the Homeownership Tenant Program at 2918 Starr Avenue in Eau Claire, Wisconsin, in a house owned by respondent Eau Claire Housing Authority.

Emma Welles suffers from posttraumatic stress disorder. One night after she became "suicidal and homicidal," Victor Welles "attempted to restrain her." As a result of these "attempts," he was charged with battery, a violent crime. Even though Victor was facing serious charges, petitioners "unanimously agreed" that he should plead no contest to battery because if he contested the crime he would "aggravate" Emma Welles's posttraumatic stress disorder. Victor Welles was convicted of battery after pleading no contest.

As a result of Victor Welles's conviction, respondent gave notice that petitioners would be terminated from the Homeownership Tenant Program. On June 21, 2007, petitioners were given an informal hearing regarding their termination. Petitioners argued that Victor Welles's conviction should not bar their participation in the program and

explained the circumstances of the conviction, including Emma Welles's posttraumatic stress disorder. The hearing examiner believed that Victor Welles would have been exonerated had the matter proceeded to trial and that Emma Welles suffered from substantial mental health issues that prevented her from working outside the home. Nonetheless, the hearing examiner upheld the termination, explaining that respondent could not "look behind" the conviction but was required to accept the judgment of the court as a determination that Victor Welles had engaged in a violent criminal act. Respondent declined to make any policy or rule changes or make an exception for petitioners in light of Emma Welles's posttraumatic stress disorder and ordered petitioners to vacate 2918 Starr Avenue by July 31, 2007.

OPINION

Petitioners contend that defendant violated their rights under the Americans with Disabilities Act, 42 U.S.C. §§ 12131-12134, by failing to accommodate Emma's posttraumatic stress disorder by making an exception to their termination from the Homeowner Tenant Program because of the circumstances behind Victor Welles's battery conviction. A Title II claim "may be established by evidence that (1) the [respondent] intentionally acted on the basis of the disability, (2) the [respondent] refused to provide a reasonable modification, or (3) the [respondent's] rule disproportionately impacts disabled people." Wisconsin Community Services, Inc. v. City of Milwaukee, 465 F.3d 737, 753

(7th Cir. 2006) (quoting Washington v. Indiana High School Athletic Association, Inc., 181 F.3d 840, 847 (7th Cir. 1999)). For each of these possible causes of action, a petitioner must show that the reason for her deprivation is her disability. Wisconsin Community Services, Inc. v. City of Milwaukee, 465 F.3d 737, 752 (7th Cir. 2006).

Petitioners have failed to allege facts from which grounds for a Title II claim can be inferred. Under no view of the facts is Emma Welles's disability the reason that petitioners became ineligible for the Homeownership Tenant Program. It was *Victor* Welles's "restraining" techniques, apparently of the sort that could be grounds for charging him with battery, and *Victor* Welles's decision to plead no contest to the charge, that made petitioners ineligible under respondent's rules. Respondent is not required to accommodate *Victor* Welles's unique approach to "accommodating" Emma's disabilities. (As an aside, I note that *domestic violence* is believed to be a common cause of posttraumatic stress disorder.) At any rate, even if I infer from petitioners' allegations that there were never actual grounds for convicting Victor Welles of battery and that he pleaded guilty *only* to avoid "aggravating" Emma Welles's disability, it was the mistake of the police or prosecutor, not Emma Welles's disability, that caused trouble for petitioners. Because petitioners have failed to establish that Emma Welles's posttraumatic stress disorder was the reason petitioners became ineligible for the Homeownership Tenant Program, they will be denied leave to proceed on their claim that respondent violated their rights under the Americans with Disabilities Act.

ORDER

IT IS ORDERED that petitioners Emma Louise Welles's and Victor Jesus Welles's request for leave to proceed in forma pauperis on their claim that respondent Eau Claire Housing Authority violated their rights under the Americans with Disabilities Act by failing to accommodate Emma Welles's posttraumatic stress disorder is DENIED and this case is DISMISSED with prejudice for petitioners' failure to state a claim upon which relief may be granted.

The clerk of court is directed to close the file.

Entered this 29th day of April, 2008.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge